

**R305-6. ADMINISTRATIVE PROCEDURES FOR THE  
DEPARTMENT OF ENVIRONMENTAL QUALITY**

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## **R305-6. ADMINISTRATIVE PROCEDURES FOR THE DEPARTMENT OF ENVIRONMENTAL QUALITY**

### **Part 1. General Provisions and Preliminary Matters**

#### **R305-6-101. Purpose of Parts**

Part 1 of this Rule (R305-6-101 through 118) addresses general and preliminary matters.

Part 2 of this Rule (R305-6-201 through 219) addresses procedures for adjudication.

Part 3 of this Rule (R305-6-301 through 303) addresses declaratory actions and emergency adjudication.

Part 4 of this Rule (R305-6-401 through 423) addresses matters relevant to specific statutes.

#### **R305-6-102. Scope of Rule.**

This rule governing administrative procedures applies to proceedings under:

- (1) the Environmental Quality Code, Utah Code Ann. Title 19, Chapter 1;
- (2) the Air Conservation Act, Utah Code Ann. Title 19, Chapter 2;
- (3) the Radiation Control Act, Utah Code Ann. Title 19, Chapter 3;
- (4) the Safe Drinking Water Act, Utah Code Ann. Title 19, Chapter 4;
- (5) the Water Quality Act, Utah Code Ann. Title 19, Chapter 5;
- (6) the Solid and Hazardous Waste Act, Utah Code Ann. Title 19, Chapter 6, Part 1;
- (7) the Hazardous Substances Mitigation Act, Utah Code Ann. Title 19, Chapter 6, Part 3;
- (8) the Underground Storage Tank Act, Utah Code Ann. Title 19, Chapter 6, Part 4;
- (9) the Used Oil Management Act, Utah Code Ann. Title 19, Chapter 6, Part 7;
- (10) the Waste Tire Recycling Act, Utah Code Ann. Title 19, Chapter 6, Part 8;
- (11) the Illegal Drug Operations Site Reporting and Decontamination Act, Utah Code Ann. Title 19, Chapter 6, Part 9;
- (12) the Mercury Switch Removal Act, Utah Code Ann. Title 19, Chapter 6, Part 10;
- (13) the Industrial Byproduct Reuse provisions, Title 19, Chapter 6, Part 10;
- (14) the Voluntary Cleanup Program provisions, Title 19, Chapter 8; and
- (15) the Environmental Covenants Act, Title 57, Chapter 25.

#### **R305-6-103. Definitions.**

The following definitions apply to this Rule. The definitions in Part 4 of this Rule, e.g., definitions of “Board” and “Executive Secretary,” also apply for matters governed by the statutory provisions specified in that Part. If the definition in Part 4 differs from the definition in Part 1, the definition in Part 4 controls.

- (1) “Administrative Law Judge” or ALJ means the person appointed under Section 19-1-103 to conduct an adjudicatory proceeding.
- (2) “Administrative Proceedings Records Officer” means the person responsible for maintaining the administrative record, as identified in R305-6-109(8).
- (3) “Executive Director” means the Executive Director of the Department of Environmental

Quality.

(4) “Initial Order” means an Order, as defined in R305-6-103(6), that is issued by the Executive Secretary and that is the final step in a proceeding that is exempt from the requirements of UAPA as provided in Section 63G-4-102(2)(k). “Initial Orders” are further described in Part 4 of this Rule.

(5) “Notice of Violation” means a notice of violation issued by the Executive Secretary that is exempt from the requirements of UAPA under Section 63G-4-102(2)(k).

(6) “Order” means any determination by the Department of Environmental Quality that affects the legal rights of a person or group of persons, but not including a rule. Orders include but are not limited to:

- (a) compliance orders and administrative settlement orders;
  - (b) cease and desist orders (but not including emergency orders issued under Section 63G-4-502);
  - (c) approvals, denials, terminations, modifications, revocations, reissuances or renewals of a permit, plan approval or license;
  - (d) approvals, denials, or modifications of financial assurance;
  - (e) approvals, denials, or modifications of requests for a variance or exemption from regulatory requirements;
  - (f) approvals, denials, or modifications of requests for application of alternative standards or requirements, or of an experimental program;
  - (g) certifications or denials of certifications;
  - (h) assessments of fees or penalties;
  - (i) declaratory orders under Section 63G-4-503 and R305-6-302;
  - (j) preliminary approvals preceeding issuance of a permit, plan approval or license if the approval is identified and issued as an order; and
  - (k) all other orders described as Initial Orders or Notices of Violation in Part 4 of this Rule.
- (7) “Part” means the sections of this Rule that are grouped together by subject matter, e.g., Sections R305-6-401 through 423 are Part 4 of this Rule.
- (8) “Person” means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state. “Person” also includes, as appropriate to the matter, other entities as provided in definitions in the statutes specified in R305-6-102 and in rules promulgated thereunder.
- (9) “Presiding Officer” shall mean, as appropriate:
- (a) The ALJ for proceedings conducted under Section 19-1-301;
  - (b) The members of a Board, for proceedings associated with determinations to be made by the Board, including determinations under Section 19-1-301(6)(b);
  - (c) The Board Chair as specified in R305-6-110(3), R305-6-215(3), and R305-6-216; or
  - (d) Any other Presiding Officer specified in Part 4.
- (10) “RFAA” means a Request for Agency Action. *See* R305-6-202.
- (11) “Rule,” unless otherwise specified, means this Rule R305-6, Administrative Procedures for the Department of Environmental Quality.

(12) "UAPA" means the Utah Administrative Procedures Act, Utah Code Ann. Title 63G, Chapter 4.

**R305-6-104. Applicability of UAPA.**

(1) Proceedings that result in Initial Orders and Notices of Violation issued by the Executive Secretary are exempt from the requirements of UAPA, as provided in Section 63G-4-102(2)(k).

(2) A proceeding to challenge an Initial Order or a Notice of Violation is subject to the requirements of UAPA as provided in this Rule.

(3) Proceedings other than those described in R305-6-104(1) are subject to the requirements of UAPA as provided in this Rule.

**R305-6-105. Notice and Comment, and Exhaustion of Remedies.**

(1) Public notice and an opportunity for comment is provided before some orders are issued. An agency may choose to provide opportunity for comment even if one is not required.

(2) If an opportunity to comment is provided, a prospective challenger must provide comments in order to preserve the challenger's right to contest an Initial Order. Comments are sufficient to preserve the right to contest an order, for each issue raised, if the comments provides sufficient information to give notice to the agency to allow the agency to fully consider the issue.

(3) For purposes of this Section R305-6-105, notice of an opportunity to comment is sufficient if it meets statutory requirements. If there are no statutory requirements, notice of an opportunity to comment is sufficient if it is posted on DEQ's website, and if at least 30 days' notice is provided.

**R305-6-106. Effectiveness and Finality of Initial Orders and Notices of Violation.**

(1) Unless otherwise stated in the order or notice, an Initial Order or a Notice of Violation is effective upon issuance and, even if it is contested, remains effective unless a stay is issued or the Initial Order or a Notice of Violation is rescinded, vacated or otherwise terminated. An Initial Order or a Notice of Violation shall become final 30 calendar days after the date issued unless it is contested as provided in R305-6-202.

(2) The date of issuance of an Initial Order or a Notice of Violation is the date the Initial Order or a Notice of Violation is signed and dated.

(3) Failure to contest an Initial Order or a Notice of Violation before it becomes final under this Section R305-6-106 waives any right of administrative contest, reconsideration, review, or judicial appeal.

**R305-6-107. Designation of Proceedings as Formal or Informal.**

(1) All proceedings to contest an Initial Order or a Notice of Violation and all other proceedings identified in Part 4 of this Rule shall be conducted as formal proceedings except as specifically provided in Part 4.

(2) The Presiding Officer in accordance with Section 63G-4-202(3) may convert proceedings that are designated to be formal to informal and proceedings which are designated as informal to

formal if conversion is in the public interest and rights of all parties are not unfairly prejudiced. In the event the Presiding Officer is an ALJ, a decision to use informal procedures must be approved by the Board.

**R305-6-108. Form of Submissions.**

- (1) The hard copy versions of documents submitted under this Rule shall ordinarily be printed on white paper that is 8-1/2 by 11 inches, with 1 inch margins and 12 point font. Double-sided printing is encouraged but not required.
- (2) Requests for agency action, notices of agency action, and responses shall include numbered paragraphs.

**R305-6-109. Service and Filing of Notices, Orders and Other Papers.**

- (1) Unless otherwise directed by the ALJ or other Presiding Officer, every filing shall be filed with the ALJ or other Presiding Officer. If no ALJ or other Presiding Officer has been appointed or otherwise identified in this Rule, two copies of every filing shall be provided to the Administrative Proceedings Records Officer.
- (2) Every filing shall be served upon, as applicable:
  - (a) the Executive Secretary;
  - (b) the person who was the recipient of the notice of violation or order being challenged;
  - (c) each person who has requested or been granted intervention; and
  - (d) the Administrative Proceedings Records Officer, as provided in R305-6-109(8)(a).
- (3)
  - (a) The Executive Secretary shall be served at the address specified in Part 4 of this Rule.
  - (b) The ALJ or other Presiding Officer shall be served at the address in the Notice of Further Proceedings or in the Notice of Agency Action.
  - (c) A person who is represented by an attorney or other representative shall be served through the attorney or other representative at the address in the Notice of Appearance or other document filed which identifies a party's representative.
  - (d) Other persons shall be served at the last known mailing address for that person in the agency's records.
- (4) Filing and service shall be made:
  - (a) by United States mail, postage pre-paid;
  - (b) by hand-delivery;
  - (c) by overnight courier delivery; or
  - (d) by the Utah State Mail system, if the sender and receiver are both state employees.
- (5) A document that is served by U.S. Mail shall be considered served on the date it is mailed. A document that is filed or served by Utah State Building Mail shall be considered served on the date it is placed in a Utah State Building Mail bin.
- (6)
  - (a) Documents that are filed expressly for the consideration of the Board shall be filed with the ALJ or other Presiding Officer, and copies shall be provided to the Executive Secretary for distribution to the Board. The person filing the document shall provide to the Executive Secretary one copy for each member of the Board.

- (b) The ALJ or other Presiding Officer shall determine which parts of the Initial Record and the Adjudicative Record shall be provided to the Board by hard copy and which shall be provided by electronic copy.
- (7) The certificate of service shall show the date and manner of service on the persons identified in R305-5-109(2).
- (8) Filing with Administrative Proceedings Records Officer.
- (a) All papers that are required to be served shall also be served on the Administrative Proceedings Records Officer, at one of these addresses:

<u>By U.S. Mail</u>	<u>By hand or commercial delivery</u>
Administrative Proceedings Records Officer Environment Division Utah Attorney General's Office PO Box 140873 Salt Lake City UT 84114-0873	Administrative Proceedings Records Officer Environment Division Utah Attorney General's Office 160 East 300 South, 5 <sup>th</sup> Floor Salt Lake City UT 84111

- (b) A party shall not file requests for discovery, responses to requests to discovery, deposition notices or other discovery-related papers with the ALJ or other Presiding Officer or the Administrative Proceedings Records Officer unless they are included as exhibits to motions, or unless otherwise ordered by the ALJ or other Presiding Officer.
- (9) Electronic filing and service.
- (a) Every party and potential intervenor shall, within 30 calendar days of service of a Notice of Further Proceedings or a Notice of Agency Action, provide an email address to be used for service. Thereafter, in addition to the service by regular mail described in R305-6-109(1) through (4), filing and service shall also be made on the same date by email.
- (b) Electronic service on Administrative Proceedings Records Officer shall be at [DEQAPRO@utah.gov](mailto:DEQAPRO@utah.gov).
- (c) (i) Text documents served by email shall be submitted as a PDF document. If the document is one that has been created by the person serving the document in the course of the adjudicative proceeding, the PDF document shall be provided in a searchable form. Additionally, the ALJ or other Presiding Officer may order that any document be provided in a searchable format.
- (ii) Large emails (5 Mb or more) may not be accepted by some email systems. It shall be the responsibility of a person sending a large email to ensure that it has been received by all parties, e.g., by telephoning or by sending a separate notification email.
- (iii) Documents that are difficult to serve by email because of their size or form may be served on a CD or DVD as provided in R305-6-109(4). A document may also be provided in hard copy form only if it is impracticable to copy the document electronically.
- (d) Photographic or other illustration documents served by email shall be submitted as:
- (i) a PDF document; or
- (ii) a "JPEG" document.
- (e) Documents filed or served by email do not need to be signed but must otherwise be identical



to documents filed and served by regular mail as described in R305-6-109(1) through (4).

(f) (i) A party concerned that the act of sending documents by electronic mail (as opposed to sending them by other methods) may compromise confidentiality may make a motion to the ALJ or other Presiding Officer to have records in a proceeding exempted from the requirements of this paragraph R305-6-109(9). Failure to do so shall constitute an assumption of the risk of accidental disclosure of confidential information.

(ii) Confidentiality of records and requests for business confidentiality are governed by the Government Records Access and Management Act and Section 19-1-106, not by this Rule.

(g) The requirements of R305-6-109(9) may be waived by the ALJ or other Presiding Officer for good cause.

### **R305-6-110. Computation and Extensions of Time**

(1) A business day is any day other than a Friday, Saturday, Sunday, or legal holiday.

(2) Computing time.

(a) If a period is stated in calendar days:

(i) exclude the day of the event that triggers the period;

(ii) count every day, including intermediate Fridays, Saturdays, Sundays, and legal holidays; and

(iii) include the last day of the period, but if the last day is a Friday, Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Friday, Saturday, Sunday, or legal holiday.

(b) If a period is stated in business days:

(i) exclude the day of the event that triggers the period; and

(ii) count every business day.

(c) No additional time is provided for responding to a filing that was served by mail if the document is served by email on the same date. If the document is not served by email, any time for responding to the document shall be extended by three calendar days.

(3) Extensions of Time.

(a) Except as otherwise provided by statute or this Rule, the ALJ or other Presiding Officer may approve extensions of any time limits established by this rule, and may extend time limits adopted in schedules established under R305-6-207.

(b) R305-6-202(9) governs extensions of time associated with filing Requests for Agency Action and R305-6-205(7) governs extensions of time associated with filing Petitions to Intervene.

(c) The ALJ or other Presiding Officer may also postpone hearings upon motion from the parties, or upon the ALJ's or Presiding Officer's own motion. For matters before a board, the Board Chair may act as Presiding Officer for purposes of this paragraph. In the event the Board Chair is not available, the Executive Director may act as Presiding Officer for purposes of this paragraph.

### **R305-6-111. Appearances and Representation**

(1) A party or a prospective intervenor to a proceeding may be represented:

(a) by an individual if the individual is the party; or

(b) by a designated officer if the party is a person other than an individual.

(2) Any party may be represented by legal counsel. An attorney who is not currently a member in good standing of the Utah State Bar must present a written or oral motion for admission *pro hac vice* made by an active member in good standing of the Utah State Bar. Communication with and service on local counsel shall be deemed to be communication with and service on the party so represented.

**R305-6-112. Proceeding Conducted by Teleconference or Other Electronic Means**

If approved by the ALJ or other Presiding Officer, any proceeding other than an evidentiary hearing or dispositive motion hearing may be held with one or more of the parties by teleconference or other electronic means if the ALJ or other Presiding Officer determines that it will be more convenient or expeditious for one or more of the parties and does not unfairly prejudice the rights of any party. Any party requesting to participate by telephone shall notify the Presiding Officer, in advance of the proceeding, of the telephone number where that party may be contacted at the time of the proceeding.

**R305-6-113. Settlement**

The parties may settle all or any portion of an action at any time during an administrative proceeding through a settlement agreement, an administrative settlement order, or a proposed judicial consent decree. Upon notice by the Executive Secretary that there is a proposed settlement that will be subject to a public comment period, the ALJ or other presiding officer shall stay an administrative proceeding, in whole or in part, until the end of that comment period and for an additional 30 calendar days in order to allow the Executive Secretary to make a final settlement determination.

**R305-6-114. Modifying Requirements of Rules.**

(a) Except as provided in R305-6-114(b), the requirements of these rules may be modified by order of the ALJ or other Presiding Officer for good cause.

(b) The requirements for timely filing a Request for Agency Action under R305-6-202(8) and (9), and a Petition to Intervene under R305-6-205(3), (4) and (7) may not be modified.

**R305-6-115. Disqualification of an ALJ, a Board Member or Other Presiding Officer.**

(1) An ALJ, Board member or other Presiding Officer shall disqualify himself from performing the functions of the Presiding Officer regarding any matter in which he, or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:

(a) Is a party to the proceeding, or an officer, director, or trustee of a party;

(b) Has acted as an attorney in the proceeding or served as an attorney for, or otherwise represented a party concerning the matter in controversy;

(c) Knows that he has a financial interest, either individually or as a fiduciary, in the subject matter in controversy or in a party to the proceeding;

(d) Knows that he has any other interest that could be substantially affected by the outcome of

the proceeding; or

(e) Is likely to be a material witness in the proceeding.

(2) An ALJ, Board member or other Presiding Officer is also subject to disqualification under principles of due process and administrative law.

(3) These requirements are in addition to any requirements under the Utah Public Officers' and Employees' Ethics Act, Utah Code Title 67, Chapter 16.

(4) Motions for Disqualification. Any motion for disqualification of an ALJ, Board member or other Presiding Officer shall be made first to the ALJ, Board or other Presiding Officer. If the Presiding Officer is not the final decisionmaker, a party may seek review of the determination of the ALJ or other Presiding Officer under R305-6-217.

**R305-6-116. Limitation on Authority Under Rule.**

Nothing in this Rule constitutes a grant of authority for any person other than the recipient to challenge a Notice of Violation or to initiate an action to challenge the agency's enforcement either generally or in a specific situation. See UAPA, Sections 63G-4-102(8) and 63G-4-201(3).

**R305-6-117. No Limitation on Authority to Bring Action.**

(1) Nothing in this Rule shall be read as a limitation either of the agency's statutory authority to bring an emergency proceeding or a judicial proceeding under UAPA, Section 63G-4-502 or the DEQ Code, Utah Code Ann. Title 19, or of the administrative procedures the agency may use for an emergency proceeding under those authorities.

(2) Failure in this Rule to provide administrative procedures for an administrative action that is authorized by statute shall not be read as a limitation of the agency's authority to bring that action.

**R305-6-118. Procedures not addressed.**

In the event there are authorities or situations for which procedures are not prescribed by these rules, the ALJ or other Presiding Officer shall, for a specific case, identify analogous procedures or other procedures that will apply. Such proceedings shall be conducted formally under UAPA.

## **Part 2. Adjudicative Procedures**

### **R305-6-201. Purpose of Part**

Part 2 of this Rule (R305-6-201 through 219) specifies procedures to be used in adjudicative proceedings.

### **R305-6-202. Requests for Agency Action and Contesting an Initial Order or Notice of Violation.**

- (1) Procedure. Initial Orders and Notices of Violation may be contested by filing a written Request for Agency Action with the Executive Secretary or the Executive Director, as specified in Part 4 of this Rule and at the address specified in that Part. The Request for Agency Action shall also be served as provided in R305-6-109.
- (2) A Request for Agency Action may also be filed to initiate agency action as provided in Part 4.
- (3) Any Request for Agency Action is governed by and shall meet all of the requirements UAPA, Section 63G-4-201(3)(a) and (3)(b).
- (4) As provided in Section 63G-4-201(3)(a), a Request for Agency Action shall be in writing and signed by the person making the Request for Agency Action, or by that person's representative, and shall include:
  - (a) the names and addresses of all persons to whom a copy of the request for agency action is being sent;
  - (b) the agency's file number or other reference number, if known;
  - (c) the date that the request for agency action was mailed;
  - (d) a statement of the legal authority and jurisdiction under which agency action is requested;
  - (e) a statement of the relief or action sought from the agency;
  - (f) a statement of the facts and reasons forming the basis for relief or agency action;
- (5) In addition to the information required by 63G-4-201(3)(a) and R305-6-202(4), a Request for Agency Action shall include the requester's name, address and email address, if any.
- (6) It is not sufficient under Section 63G-4-201(3)(a) to file a request for a hearing or a general statement of disagreement.
- (7) If a Request for Agency Action is made by a person other than the recipient of an order, the Request for Agency Action shall also include a Petition to Intervene that meets the requirements of Section 63G-4-207 and R305-6-205.
- (8) To be timely, a Request for Agency Action made to contest an Initial Order or a Notice of Violation shall be received for filing at the address specified in Part 4 of this Rule within 30 calendar days of the issuance of the Initial Order or a Notice of Violation.
- (9) Extension of Time to File Request for Agency Action.
  - (a) The time for filing a Request for Agency Action may be extended by stipulation of the parties. Any such stipulation shall be filed with the same individual with whom a Request for Agency Action would be filed as specified in Part 4, before the date the order or notice of agency action becomes final.

(b) The time for filing a Petition to Intervene may be extended by order of the Board or other final decisionmaker. Any motion for extension shall be filed before the date the order or notice of agency action becomes final.

**R305-6-203. Notice of Further Proceedings and Response to Request for Agency Action.**

(1) In actions initiated by the agency, the agency shall issue a Notice of Agency Action in accordance with Section 63G-4-201(2).

(2)(a) In actions initiated by a Request for Agency Action, the ALJ or other Presiding Officer shall issue a Notice of Further Proceedings in accordance with Section 63G-4-201(3)(d) and (e).

(b) If a matter is not set for hearing at the time the Notice is issued, notice of the time and place for a hearing shall be provided promptly after the hearing is scheduled.

(3) A Response to a Request for Agency Action may, as appropriate, simply reassert information contained in a challenged Initial Order, Notice of Violation, Notice of Agency Action, or other Order.

**R305-6-204. Parties**

(1) For a proceeding that follows an Initial Order or Notice of Violation, the following persons are parties to an adjudicative proceeding:

(a) the person to whom the Initial Order or Notice of Violation was directed, such as a person who submitted a permit, license or plan approval application that was approved or disapproved by an Initial Order;

(b) The Executive Secretary of the Board who issued an Initial Order or Notice of Violation; and

(c) All persons to whom the Board or other final decisionmaker has granted intervention under R305-6-205; and

(2) For a proceeding that does not follow an Initial Order or Notice of Violation, the following persons are parties to an adjudicative proceeding, as appropriate:

(a) the person to whom a Notice of Agency Action or other Order was directed;

(b) All persons for whom intervention has been granted under R305-6-205; and

(c) If the Executive Secretary is the Presiding Officer, other persons within DEQ as designated by the Presiding Officer.

(3) Amicus Curiae (Friend of the Court). A person may be permitted by the ALJ or other Presiding Officer to enter an appearance as amicus curiae (friend of the court), subject to conditions established by the ALJ or other Presiding Officer.

**R305-6-205. Intervention**

(1) A Petition to Intervene shall meet the requirements of Section 63G-4-207.

(2) Except as provided in R305-6-205(5), the timeliness of a Petition to Intervene under Section 63G-4-207 shall be determined by the ALJ or other Presiding Officer under the facts and circumstances of each case.

(3) If an ALJ or other Presiding Officer has been appointed to make a recommended decision to the Board or other final decisionmaker, a recommended decision denying intervention shall be

forwarded to the Board or other final decisionmaker for a final determination. A decision by the ALJ or other Presiding Officer to grant intervention may be considered by the Board or other final decisionmaker under R305-6-217 (Interlocutory Review) if the standards specified in that provision are met.

(4) A person who is not a party to a proceeding but who seeks to challenge an Initial Order of the Executive Secretary that has not been challenged by a party shall file a Petition for Intervention with a Request for Agency Action. Any such Petition to Intervene and Request for Agency Action must be filed before the order becomes final under R305-6-106(1).

(5) Any response to a Petition to Intervene shall be filed within 20 calendar days of the date the Petition was filed.

(6) Petitions to Intervene shall be filed at the same address as provided for Requests for Agency Action in Part 4 of this Rule. Service shall be as provided in R305-6-109.

(7) Extension of Time to File Petition to Intervene.

(a) The time for filing a Petition to Intervene may be extended by stipulation of the parties and the prospective intervenor. Any such stipulation shall be filed before the date the order or notice of agency action becomes final.

(b) The time for filing a Request for Agency Action may be extended by order of the Board or other final decisionmaker. Any motion for extension shall be filed with the same individual with whom a Request for Agency Action would be filed as specified in Part 4, before the date the order or notice of agency action becomes final.

**R305-6-206. Procedures for Informal Proceedings.**

(1) Procedures for Informal Proceedings are governed by Section 63G-4-203.

(2) No hearing or other conference is required for an informal proceeding. If a hearing is held, the parties shall be permitted to testify, present evidence and comment on issues. A hearing may be conducted as a meeting rather than using trial-type procedures.

(3) Discovery and intervention are not available in an informal proceeding. The presiding officer may issue a subpoena or other order to compel the production of necessary evidence.

**R305-6-207. Pre-hearing Conferences, Proceedings and Order.**

(1) The ALJ or other Presiding Officer may hold one or more pre-hearing conferences for the purposes of: identifying and, if possible, narrowing the issues that will be considered at a hearing; determining whether an issue will be considered at an evidentiary hearing or a hearing to rule on a dispositive motion; establishing schedules for disclosures and the filing of motions, testimony and pre-hearing memoranda; determining the status of the litigation; and considering any other pre-hearing matters. The ALJ or other Presiding Officer shall issue pre-hearing orders memorializing the determinations made about these matters.

(2) The ALJ or other Presiding Officer may at any time order a party to make a more clear statement of the issues the party intends to raise at a hearing. The ALJ or other Presiding Officer may also order a party to respond to questions about those issues for the purpose of clarifying the issues. The other parties to the proceeding may, within eight business days of the date a response to the order is served, file and serve comments on the response.

(3) The ALJ or other Presiding Officer may:

(a) require the parties to submit proposed schedules for the proceeding; and

(b) change deadlines and page limits for submissions established by this Rule.

(4) The parties may request the ALJ or other presiding officer hold a conference for the purpose of addressing the matters described in R305-6-207(1).

**R305-6-208. Agency Record.**

(1) The final agency record shall consist of:

(a) An Initial Record relating to Initial Orders and Notices of Violation, further described in R305-6-208(2);

(b) An Adjudicative Record consisting of:

(i) All documents filed with the ALJ or other Presiding Officer, and with the Administrative Records Officer;

(ii) All orders and other written communications from the ALJ or other Presiding Officer;

(iii) All transcripts of hearings and exhibits submitted during a hearing; and

(iv) Other documents as determined by the ALJ or other Presiding Officer.

(2)(a) The Executive Secretary shall prepare an Initial Record, which shall consist of background documents for the matter that shall be deemed to be authenticated for purposes of the hearing and motions, and may be introduced as evidence by any party. The Initial Record is not intended to take the place of discovery or of the proffer by parties of documentary evidence.

(b) The Initial Record shall be indexed and compiled in chronological order. Each page of the Initial Record shall be numbered for ease of reference. A hard copy and an electronic copy of the Initial Record shall be filed with the ALJ or other Presiding Officer. An electronic copy of the Initial Record shall be served as provided in R305-6-109(9). Electronic records shall meet the requirements for electronic filing and service in R305-6-109(9)(c) and (d).

(c) The Initial Record document index shall include the Initial Order or Notice of Violation being challenged, any Request for Agency Action, any responsive pleading, and any relevant:

(i) permit, plan approval or license; application;

(ii) draft order (such as a permit) that was released for public comment;

(iii) public comments received;

(iv) comment response document; and

(v) final permit.

(d) Documents other than those specified in R305-6-208(2)(c) may be included in the Initial Record only upon the agreement of the parties. Documents that the parties cannot agree upon may be submitted in the course of the proceeding. Failure of a party to object to inclusion of a document in the Initial Record shall be deemed to be agreement to its inclusion and its

authenticity.

(e) If many of the documents or large parts of the documents that would ordinarily constitute the Initial Record are irrelevant to the issues raised in the proceeding, the Executive Secretary may propose a more limited Initial Record that does not include the documents specified in R305-6-208(2)(c). If a matter involves a multi-volume permit, for example, the Executive Secretary may propose to exclude the parts of the permit that relate to emergency response if the dispute is about waste sampling.

(f) Analytical analyses of samples documented in the Initial Record are deemed to be accurate unless specifically objected to no later than fifteen calendar days before the date the Executive Secretary's preliminary witness lists are due.

(3) Procedure for preparing Initial Record.

(a) Unless the ALJ or Presiding Officer directs otherwise, within 40 calendar days after the date of a Notice of Further Proceedings, the Executive Secretary shall compile a draft index of documents in the Initial Record as described in paragraph (2)(c), and shall provide the list to all other parties. Each party may, within fifteen calendar days of the date the draft index was served, propose to add documents to or delete documents from the index.

(b) The Executive Secretary shall consider the other parties' submissions and shall, within ten calendar days of the date the submissions were served, file an Initial Record.

(c) Parties may file objections to the Initial Record within eight business days of the date of the Initial Record. The Executive Secretary may respond to objections within eight business days of service of the objections.

(d) The ALJ or other Presiding Officer shall consider objections filed and may order changes in the Initial Record.



**R305-6-209. Disclosures and Discovery.**

(1) Informal discovery by agreement of the parties is preferred. All parties shall have access to information contained in the agency's records unless the records are not required to be disclosed under the Government Records Access and Management Act, Title 63G, Chapter 4.

(2) Formal discovery is allowed in a matter by agreement of the parties involved in the formal discovery or if so directed by the ALJ or other Presiding Officer in a formal proceeding. The ALJ or other Presiding Officer may order formal discovery when each of the following elements is present:

- (a) informal discovery is inadequate to obtain the information required;
- (b) there is no other available alternative that would be less costly or less burdensome;
- (c) the formal discovery proposed is not unduly burdensome;
- (d) the formal discovery proposed is necessary for the parties to properly prepare for the hearing;
- (e) the formal discovery does not seek a party's position regarding a question of law or about the application of facts to law that could be addressed in a motion to dismiss or a motion for summary judgment;
- (f) the formal discovery does not allow a party to probe the mental processes of the Executive Secretary or other agency decisionmaker; and
- (g) the formal discovery proposed will not cause unreasonable delays.

(3)(a) Except as otherwise provided in this Section R305-6-209, the time periods, limitations and other requirements for discovery in the Utah Rules of Civil Procedure shall apply unless otherwise ordered by the ALJ or other Presiding Officer after consideration of the specific formal discovery proposed.

(b) No initial disclosure shall be required as provided in Utah Rules of Civil Procedure Rule 26(a)(1)(B) through (D).

(4) Each party shall provide to the other parties copies of any documents it intends to introduce as provided in R305-6-212(1). This information shall be provided and updated in accordance with a schedule established in the pre-hearing order.

**R305-6-210. Subpoenas.**

(1) A party requesting an administrative subpoena must prepare it and submit it to the Administrative Proceedings Records Officer for the signature of the ALJ or other Presiding Officer. Each administrative subpoena form shall have the following statement prominently displayed on the form:

This Administrative Subpoena is issued under the authority of the Utah Administrative Procedures Act, Section 63G-4-205(2). If you believe that this subpoena is inappropriate, you may object. The standards of Utah Rules of Civil Procedure, Rule 45, will be used to determine whether a subpoena is appropriate. File any objection with [requester to insert title and address of ALJ or other Presiding Officer]. See also Utah Admin. Code R305-6-210.

- (2) Service. Service of the subpoena shall be made by the party requesting it in a manner consistent with the Utah Rules of Civil Procedure, Rule 45(b).
- (3) Objection. A party or other person served with a subpoena may file an objection for the reasons specified in the Utah Rules of Civil Procedure, Rule 45. In response, the party that served the subpoena may file a Motion to Compel. The ALJ or other Presiding Officer shall consider the Motion to Compel and require compliance with the existing subpoena, issue a new subpoena on specified conditions, or quash the subpoena.

**R305-6-211. Motions**

- (1) Ruling on Motions. Motions may be made by written motion or orally during a hearing. Each motion shall include the grounds upon which it is based and the relief or order sought. Copies of written motions shall be filed and served in accordance with R305-6-109.
- (2) Responses to motions shall be filed within 12 business days of service of the Motion.
- (3) Memoranda in support of or in opposition to motions may not exceed 30 pages, not including exhibits or any statement of facts.
- (4) Deadlines and page limits may be modified by order of the ALJ or other Presiding Officer.
- (5) When appropriate, parties are encouraged to file dispositive motions, such as a Motion for Summary Judgment, or a Motion to Dismiss or a Motion for Judgment on the Pleadings. Parties are encouraged to file dispositive motions no later than 45 calendar days prior to the scheduled hearing.

**R305-6-212. Pre-Hearing Briefs and other Pre-Hearing Submissions**

- (1) At least twenty business days before a scheduled hearing, the parties shall exchange proposed exhibits and thereafter shall meet to attempt to stipulate to the admission of exhibits.
- (2) At least ten business days before a scheduled hearing, the parties shall jointly file and serve any stipulation regarding admission of exhibits and shall file and serve copies of all of its exhibits that are subject to a stipulation. Electronic copies of the exhibits, as described in R305-6-109(9)(c) and (d), shall be filed with the ALJ or other Presiding Officer, and served on other parties. Electronic and hard copies of the exhibits shall be served on the Administrative Proceedings Records Officer.
- (3) Unless otherwise ordered by the ALJ or other Presiding Officer, each party may, but is not required to file, at least ten business days before a scheduled hearing:
  - (a) A pre-hearing brief, limited to twenty-five pages, not including exhibits or any statement of facts; and
  - (b) Any motions related to the way the hearing will be conducted, or to the admission of exhibits and other evidence that will be presented at the hearing.
- (4) A party may object to an exhibit when it is introduced in a hearing, except that no party may object to:
  - (a) the authenticity of a record included in the Initial Record;
  - (b) the accuracy of analytical analysis of samples documented in the Initial Record, except as provided in R305-6-208(2)(f).

- (5) (a) Any party may file testimony and evidence using pre-filed testimony of a witness, unless otherwise ordered by the ALJ or other Presiding Officer.
- (b) For lengthy or complex proceedings, pre-filed testimony is preferred and may be required by the ALJ or other Presiding Officer.
- (c) Pre-filed testimony shall be submitted at least ten business days before a scheduled hearing.

**R305-6-213. Hearings.**

- (1) The ALJ or other Presiding Officer shall govern the conduct of a hearing, and may establish reasonable limits on the length of witness testimony, cross-examination, oral arguments or opening and closing statements while affording to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence. The ALJ or other Presiding Officer shall also establish the order of presentation at the hearing.
- (2)(a) All hearings shall, at a minimum, be recorded at the agency's expense using audio recording devices. The agency may elect instead to use a court reporter.
- (b) Any party may request that the agency use a court reporter for the hearing, which request shall be granted by the ALJ or other Presiding Officer. Unless otherwise ordered by the ALJ or other Presiding Officer, the requesting party shall bear the cost associated with these requests. Any such requests shall be submitted to the ALJ or other Presiding Officer at least eight business days before the scheduled hearing.
- (3) Evidence
  - (a) Except as otherwise stated in this rule, formal proceedings shall be conducted in accordance with the Utah Rules of Evidence.
  - (b) Every party to an adjudicative proceeding has the right to introduce evidence, subject to the Utah Rules of Evidence. The evidence may be oral or written, real or demonstrative, direct or circumstantial.
  - (i) The ALJ or other Presiding Officer may admit any reliable evidence possessing probative value which would be accepted by a reasonably prudent person in the conduct of his affairs.
  - (ii) The ALJ or other Presiding Officer may admit hearsay evidence. However, no finding of fact may be based solely on hearsay evidence unless that evidence is admissible under the Utah Rules of Evidence.
  - (iii) If a party attempts to introduce evidence into a hearing, and it is excluded, the party may proffer the excluded testimony or evidence to allow any reviewing authority to pass on the correctness of the ruling of exclusion.
- (c) All witnesses who have provided pre-filed testimony shall be present at the hearing unless otherwise ordered by the ALJ or other Presiding Officer. A witness for whom pre-filed testimony has been submitted shall be allowed to give a brief summary of that testimony, and shall then be made available for cross-examination. The pre-filed testimony of any witness who is not present at the hearing may be treated as hearsay evidence.
- (d) Oral testimony at a formal hearing will be sworn. The oath will be administered by the reporter, the ALJ or other Presiding Officer. Anyone testifying falsely under oath may be subject to prosecution for perjury in accordance with the provisions of Sections 76-8-502 and 76-8-503.

**R305-6-214. Post-Hearing Submissions**

Unless otherwise ordered by the ALJ or other Presiding Officer, not later than five business days after a hearing, each party may, but is not required to submit:

- (1) A post-hearing brief, limited to ten pages, not including exhibits; and
- (2) Proposed findings of fact and conclusions of law.

**R305-6-215. Recommended Decisions and Orders.**

(1) If the ALJ or other Presiding Officer is not the final decisionmaker for a matter, the ALJ or other Presiding Officer shall prepare a recommended decision that includes written findings of fact and written conclusions of law, and that meets the requirements of Section 63G-4-208. At the time the ALJ or other Presiding Officer sends the recommended decision to the final decisionmaker, it shall be served on the parties.

(2) (a) Any party may provide comments to the final decisionmaker on the recommended decision.

(b) Unless otherwise ordered by the final decisionmaker, comments shall be filed with the final decisionmaker within eight business days of the date the recommended order is issued. Comments shall cite to the specific parts of the record which support the comments and shall be limited to 20 pages unless an enlargement of pages is approved by the presiding officer responsible for the final decision.

(3) The Board Chair may act as Presiding Officer for purposes of R305-6-215(2)(b). In the event the Board Chair is not available, the Executive Director may act as Presiding Officer.

(4)(a) The final decisionmaker shall issue an order that includes written findings of fact and written conclusions of law, and that meets the requirements of Section 63G-4-208.

(b) If the proceeding is subject to the requirements of Section 19-1-301(6)(a), the Board may approve, approve with modifications, or disapprove a proposed dispositive action, including findings of facts and conclusions of law, submitted by the ALJ.

**R305-6-216. Consideration by the Board or other final decisionmaker.**

(1) If an ALJ or other Presiding Officer submits a recommended decision to the Board or other final decisionmaker, the Parties shall be granted time before the Board or other final decisionmaker to present oral argument regarding the recommended decision.

(2) The final decisionmaker will establish the time allowed for each party.

(3) If the final decisionmaker is a board, the Board Chair may act as the Presiding Officer for purposes of issuing an order establishing the amount and division of time and the order of presentation. In the event the Board Chair is not available, the Executive Director may act as Presiding Officer.

**R305-6-217. Interlocutory Review.**

(1) This provision applies to proceedings where an ALJ or other Presiding Officer has responsibility for the evidentiary proceedings, but the Board or a different Presiding Officer has responsibility for the final determination.

(2) Ordinarily, a party may challenge an order issued by the ALJ or other Presiding Officer only after the ALJ or other Presiding Officer has made a final recommended decision. However a party may request interlocutory consideration of an order before that time if a ruling that is alleged to be in error could not be corrected through a challenge to the final recommended decision (e.g., a ruling denying privileged status to records), or in other situations where it may materially advance the termination of the proceeding. The final decisionmaker's determination to hear an interlocutory request to overturn an order is discretionary.

(3) A determination that a document is not privileged, and any determination relative to a motion for stay under R305-6-218 will ordinarily be considered to meet the requirements of R305-6-217(2), but are not exhaustive of the determinations that may be considered to meet the requirements of R305-6-217(2).

#### **R305-6-218. Stays of Orders.**

(1) Stay of Orders Pending Administrative Adjudication

(a) A party seeking a stay of an Initial Order during an adjudicative proceeding shall file a motion with the ALJ or other Presiding Officer.

(b) An ALJ or other Presiding Officer shall grant a stay if the party seeking the stay demonstrates the following:

(i) The party seeking the stay will suffer irreparable harm unless the stay is issued;

(ii) The threatened injury to the party seeking the stay outweighs whatever damage the proposed stay is likely to cause the party restrained or enjoined;

(iii) The stay, if issued, would not be adverse to the public interest; and

(iv) There is substantial likelihood that the party seeking the stay will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further adjudication.

(2) The standards specified in R305-6-218(1) shall apply to any interlocutory review of an order regarding a requested stay of an Initial Order.

(3) Stay of the Order Pending Judicial Review.

(a) A party seeking a stay of a final order by the Board or other final decisionmaker shall file a motion with the Board or other final decisionmaker.

(b) The standards specified in R305-6-218(1)(b) shall apply to any such request.

(4) If granted, a stay suspends the challenged order for the period as directed by the ALJ or other Presiding Officer.

#### **R305-6-219. Default**

(1) A party may be found in default in accordance with Section 63G-4-209. The default order shall include a statement of the grounds for default and shall be filed and served on all parties.

(2) A defaulted party may seek to have the default set aside according to procedures set forth in the Utah Rules of Civil Procedure.

### **PART 3. DECLARATORY AND EMERGENCY ACTIONS**

#### **R305-6-301. Purpose of Part.**

Part 3 of this Rule (R301-4-301 through 303) governs requests for declaratory and emergency actions.

#### **R305-6-302. Declaratory Orders.**

(1) For all matters over which the Executive Secretary has Initial Order authority as described in Part 4 of this Rule, any Request for a Declaratory Order shall be addressed first to the Executive Secretary. For all other matters, a Request for Declaratory Order shall be filed with the Presiding Officer specified in Part 4 of this Rule.

(2) Any person who seeks to obtain a declaratory order shall file a Request for Declaratory Order that meets these requirements. The request shall:

- (a) Clearly designate the Request for Agency Action as one requesting a declaratory order;
- (b) Identify the statute, rule or order to be reviewed;
- (c) Describe in detail the situation or circumstances in which the applicability of the statute, rule or order is to be reviewed;
- (d) Describe the Requestor's reason or need for the order;
- (e) Set out a proposed order;
- (f) As appropriate, address with specificity each of the circumstances described in R305-6-302(4) and demonstrate that the condition does not apply.

(3) Failure to submit a complete Request for Declaratory Order is grounds for denying the Request.

(4) The following classes of circumstances are exempt from declaratory order, as provided in Section 63G-4-503(3)(b):

- (a) Circumstances in which a declaratory order would substantially prejudice the rights of a person who would be a necessary party under the Utah Rules of Civil Procedure, unless the Petitioner has that person's consent in writing;
- (b) Circumstances in which the person requesting the declaratory order does not have standing;
- (c) Circumstances in which informal agency opinion or other agency action is sufficient to meet the need described in the Petition;
- (d) Circumstances in which questions which have already been adequately addressed by agency in an order or in informal advice;
- (e) Circumstances that raise questions that are clear and do not warrant an order;
- (f) Circumstances that are more properly addressed by a statutory change or rulemaking proceedings;
- (g) Circumstances that arise out of pending or anticipated litigation in a civil, criminal or administrative forum and that are more properly addressed by that forum;
- (h) Circumstances under which the critical facts are not clear and may be altered by subsequent events, or the issues are otherwise not yet ripe for consideration;

- (i) Circumstances under which the person making the request is unable to show that real risk to that person will be confronted if the intended course of conduct is taken; and
  - (j) Circumstances involving use of the agency's emergency authority.
- (5) If no declaratory order or order setting the matter for hearing is issued within 60 calendar days of the Request, the Request shall be deemed denied.
- (6) An Initial Order of the Executive Secretary on a Request for Declaratory Action may be challenged as described in R305-6-202. The matter may be resolved using the procedures specified in Part 2 of this Rule, or other procedures specified by the Presiding Officer.

**R305-6-303. Emergency Actions.**

Emergency orders may be issued as provided in Section 63G-4-502. See R305-6-117.

#### **PART 4. SPECIAL PROVISIONS RELATING TO SPECIFIC STATUTES**

##### **R305-6-401. Purpose of Part.**

Part 4 of this Rule (R305-6-401 through 423) provides definitions and other provisions that will govern the way the procedures specified in Part 3 of this Rule will apply to adjudication brought under specific statutes. The following matters are addressed:

- (1) Definitions;
- (2) Identification of Initial Orders and Notices of Violation that are exempt from UAPA requirements;
- (3) Where a Request for Agency Action and other submissions should be filed; and
- (4) Whether proceedings will be conducted formally or informally.

##### **R305-6-402. Addresses for Filing.**

- (1) Documents submitted to the Executive Director of the Department of Environmental Quality shall be sent to:

Executive Director  
Department of Environmental Quality  
P.O. Box 144810  
Salt Lake City, Utah 84114-4810

Alternatively, these documents may be delivered by courier or hand delivery to:

Executive Director  
Department of Environmental Quality  
195 North 1950 West, 4th Floor  
Salt Lake City, UT 84116-3097

- (2) Documents submitted to the Executive Secretary of the Air Quality Board shall be sent to:

Executive Secretary, Utah Air Quality Board  
Division of Air Quality  
P.O. Box 144820  
Salt Lake City, Utah 84114-4820

Alternatively, these documents may be delivered by courier or hand delivery to:

Executive Secretary, Utah Air Quality Board  
Division of Air Quality  
195 North 1950 West, 4th Floor  
Salt Lake City, UT 84116-3097



(3) Documents submitted to the Executive Secretary of the Drinking Water Board shall be sent to:

Executive Secretary, Drinking Water Board  
Division of Drinking Water  
P.O. Box 144830  
Salt Lake City, Utah 84114-4830

Alternatively, these documents may be delivered by courier or hand delivery to:

Executive Secretary, Drinking Water Board  
Division of Drinking Water  
195 North 1950 West, 3rd Floor  
Salt Lake City, UT 84116-3097

(4) Documents submitted to the Executive Secretary of the Radiation Control Board shall be sent to:

Executive Secretary, Radiation Control Board  
Division of Radiation Control  
P.O. Box 144850  
Salt Lake City, Utah 84114-4850

Alternatively, these documents may be delivered by courier or hand delivery to:

Executive Secretary, Radiation Control Board  
Division of Radiation Control  
195 North 1950 West, 3rd Floor  
Salt Lake City, UT 84116-3097

(5) Documents submitted to the Executive Secretary of the Solid and Hazardous Waste Control Board (but not including documents submitted under the Underground Storage Tank Act, Part 4 of Section 19-6 or the Illegal Drug Operations Site Reporting and Decontamination Act, Part 9 of 19-6) shall be sent to:

Executive Secretary, Solid and Hazardous Waste Control Board  
Division of Solid and Hazardous Waste  
P.O. Box 144880  
Salt Lake City, Utah 84114-4880

Alternatively, these documents may be delivered by courier or hand delivery to:

Executive Secretary, Solid and Hazardous Waste Control Board  
Division of Solid and Hazardous Waste  
195 North 1950 West, 2nd Floor  
Salt Lake City, UT 84116-3097

(6) Documents submitted to the Executive Secretary of the Solid and Hazardous Waste Control Board pursuant to Parts 4 and 9 of Section 19-6 shall be sent to:

Executive Secretary, Solid and Hazardous Waste Control Board  
Division of Environmental Response and Remediation  
P.O. Box 144840  
Salt Lake City, Utah 84114-4840

Alternatively, these documents may be delivered by courier or hand delivery to:

Executive Secretary, Solid and Hazardous Waste Control Board  
Division of Environmental Response and Remediation  
195 North 1950 West, 1st Floor  
Salt Lake City, UT 84116-3097

(7) Documents submitted to the Executive Secretary of the Water Quality Board shall be sent to:

Executive Secretary, Water Quality Board  
Division of Water Quality  
P.O. Box 144870  
Salt Lake City, Utah 84114-4870

Alternatively, these documents may be delivered by courier or hand delivery to:

Executive Secretary, Water Quality Board  
Division of Water Quality  
195 North 1950 West, 3rd Floor  
Salt Lake City, UT 84116-3097

(8) Documents submitted to the Executive Secretary of the Water Quality Board relative to uranium mill facilities or low level radioactive waste disposal facilities shall be sent to:

Executive Secretary, Water Quality Board/Radiation  
Division of Radiation Control  
P.O. Box 144850  
Salt Lake City, Utah 84114-4850

For courier or hand delivery, these documents shall be sent to:

Executive Secretary, Water Quality Board/Radiation  
Division of Radiation Control  
195 North 1950 West, 3rd Floor  
Salt Lake City, UT 84116-3097

**R305-6-403. Matters governed by Title 19, Chapter 1 of the Environmental Quality Code.**

(1) Scope. This subsection R305-6-403 applies to all matters governed by Title 19, Chapter 1, of the Environmental Quality Code.

(2) Definitions.

“Presiding officer” means the Executive Director.

(3) Orders and notices issued under the authority of Title 19, Chapter 1 of the the Environmental Quality Code are not exempt from the requirements of UAPA. The provisions of UAPA and of this Rule shall apply to proceedings initiated under the authority of Title 19, Chapter 1, the “Environmental Quality Code.”

(4) Initiating and intervening in a proceeding. Nothing in this Rule constitutes authority for any person other than the agency to initiate adjudicative proceedings under Title 19, Chapter 1. Nothing in this Rule constitutes authority for any person to intervene in an action commenced under Title 19, Chapter 1.

(5) Proceedings under Title 19, Chapter 1 of the Environmental Quality Code, and specifically under Section 19-1-202(2)(a), will be conducted formally under UAPA.

(6) Agency review under Section 63G-4-301 is not available. A request for reconsideration may be filed under Section 63G-4-302.

**R305-6-404. Matters governed by the Air Conservation Act, Title 19, Chapter 2, but not including Sections 19-2-112 or 19-2-123 through 19-2-126.**

(1) Scope. This subsection R305-6-404 applies to all matters governed by the Air Conservation Act, Title 19, Chapter 2, but not including Sections 19-2-112 or 19-2-123 through 19-2-126.

(2) Definitions.

“Board” means the Air Quality Board.

“Executive Secretary” means the Executive Secretary of the Air Quality Board.

(3) The Board delegates to the Executive Secretary the authority to issue Initial Orders and Notices of Violation as described in R305-6-404(4).

(4) Initial Orders and Notices of Violation issued by the Executive Secretary under the authority of the Air Conservation Act are exempt from the requirements of UAPA under 63G-4-102(2)(k). Initial Orders and Notices of Violation include, but are not limited to, Initial Orders and Notices of Violation regarding:

(a) approval, denial, termination, modification, revocation, reissuance or renewal of permits, plans, or approval orders;

(b) notices of violation and orders associated with notices of violation;

- (c) orders to comply and orders to cease and desist;
  - (d) certification for tank vapor tightness testing under R307-342;
  - (e) certification of asbestos contractors under R307-801;
  - (f) fees imposed for major source reviews under R307-414;
  - (g) assessment of other fees except as provided in R307-103-14(7);
  - (h) requests for variances, exemptions, and other approvals;
  - (i) requests or approvals for experiments, testing or control plans;
  - (j) certification of individuals and firms who perform lead-based paint activities and accreditation of lead-based paint training providers under R307-840;
  - (k) compliance with the requirements of the Air Conservation Act and rules promulgated thereunder; and
  - (l) declaratory orders under Section 63G-4-503 and R305-6-302.
- (5) Initiating and intervening in a proceeding. A request to initiate or intervene in a proceeding, as described in this Rule, shall be served on the Executive Secretary at the address specified in R305-6-402(2). See also R305-6-202 and R305-6-205.
- (6) A challenge to an Initial Order or to a Notice of Violation will be conducted formally under UAPA.
- (7) Agency review of the Board's decision under Section 63G-4-301 is not available. A request for reconsideration may be filed under Section 63G-4-302.

**R305-6-405. Matters governed by Section 19-2-112 of the Air Conservation Act.**

- (1) This subsection R305-6-405 describes matters governed by Section 19-2-112(1) of the Air Conservation Act, and applies to matters governed by Section 19-2-112(2) of that Act.
- (2) Actions taken under the authority of Section 19-2-112(1) are subject to the procedures specified in that subsection only; neither this Rule nor UAPA applies.
- (3) Definitions.  
"Presiding officer" means the Executive Director or any person or persons the Executive Director appoints as Presiding Officer.
- (4) Orders and notices issued under the authority of 19-2-112(2) are subject to the requirements of and procedure specified in 63G-4-502. There is no administrative review available for orders issued under this provision. Any request for reconsideration shall be addressed to the Executive Director at the address specified in R305-6-402(1).
- (5) Initiating and intervening in a proceeding. Nothing in this Rule constitutes authority for:
  - (a) any person other than the agency to initiate adjudicative proceedings under 19-2-112(2); or
  - (b) any person to intervene in an action commenced under 19-2-112(2).

**R305-6-406. Matters governed by Sections 19-2-123 through 19-2-125 of the Air Conservation Act.**

- (1) Scope. This subsection R305-6-406 applies to matters governed by Sections 19-2-123 through 19-2-125 of the Air Conservation Act. Sections 59-7-605 and 59-10-1009 of the Utah Tax Code also apply to these matters.

(2) Definitions.

(a) General.

“Board” means, as appropriate, the Air Quality Board or the Water Quality Board.

“Executive Secretary” means, as appropriate, the Executive Secretary of the Air Quality Board or the Water Quality Board.

(3) The Board delegates to the Executive Secretary the authority to issue Initial Orders as described in R305-6-406(5).

(4) Requests relating to air pollution control equipment shall be directed to the Air Quality Board and its Executive Secretary. Requests for water pollution control equipment shall be directed to the Water Quality Board and its Executive Secretary. See Section 19-2-102(14)(a).

(5) Initial Orders issued by the Executive Secretary under the authority of 19-2-123 through 19-2-126 are exempt from the requirements of UAPA under 63G-4-102(2)(k). Initial Orders include, but are not limited to, Initial Orders regarding eligibility of pollution control equipment for tax exemptions under R307-120 and R307-121, and declaratory orders under Section 63G-4-503 and R305-6-302.

(6) Initiating and intervening in a proceeding. A request for agency action or a request to intervene in a proceeding, as described in this Rule, shall be served, as appropriate under R305-6-406(4), on the Executive Secretary for the Air Quality Board as specified in R305-6-402(2), or on the Executive Secretary for the Water Quality Board as specified in R305-6-402(7).

(7) A challenge to an Initial Order or notice issued under 19-2-123 through 19-2-126 will be conducted formally under UAPA.

(8) Agency review of the Board’s decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

**R305-6-407. Matters governed by the Radiation Control Act, Title 19, Chapter 3, but not including Section 19-3-109.**

(1) Scope. This subsection R305-6-407 applies to all matters governed by the Radiation Control Act, Title 19, Chapter 3, but not including Section 19-3-109.

(2) Definitions.

“Board” means the Radiation Control Board.

“Executive Secretary” means the Executive Secretary of the Radiation Control Board.

(3) The Board delegates to the Executive Secretary the authority to issue Initial Orders and Notices of Violation as described in R305-6-407(4).

(4) Initial Orders and Notices of Violation issued by the Executive Secretary under the authority of the Radiation Control Act are exempt from the requirements of UAPA under 63G-4-102(2)(k). Initial Orders and Notices of Violation include, but are not limited to, Initial Orders and Notices of Violation regarding:

(a) approval, amendment, denial, termination, transfer, revocation, or renewal of licenses or permits;

(b) generator site access certifications and registrations;

- (b) requests for variances or exemptions;
  - (c) notices of violation and orders associated with notices of violation;
  - (d) orders assessing penalties;
  - (e) orders to comply and orders to cease and desist;
  - (f) orders regarding impoundment of radioactive material
  - (g) orders regarding decommissioning;
  - (h) orders regarding financial assurance;
  - (i) orders regarding surveying, monitoring, sampling, or information;
  - (j) compliance with the requirements of the Radiation Control Act and rules promulgated thereunder; and
  - (k) declaratory orders under Section 63G-4-503 and R305-6-302.
- (5) Initiating and intervening in a proceeding. A request for agency action or a request to intervene in a proceeding, as described in this Rule, shall be served on the Executive Secretary as specified in R305-6-402(4).
- (6) A challenge to an Initial Order or notice issued under the Radiation Control Act will be conducted formally under UAPA.
- (7) Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

**R305-6-408. Matters governed by the Radiation Control Act, Title 19, Chapter 3, Section 19-3-109.**

- (1) Scope. This subsection R305-6-408 applies to all matters governed by Section 19-3-109 of the Radiation Control Act.
- (2) Definitions.
- “Board” means the Radiation Control Board.
- “Executive Secretary” means the Executive Secretary of the Radiation Control Board.
- (3) The Board delegates to the Executive Secretary the authority to issue a Notice of Agency Action assessing penalties under Section 19-3-109.
- (4) Before issuing a Notice of Agency Action assessing penalties, the Executive Secretary shall provide at least 30 calendar days’ a notice of the proposed penalty, and shall provide the recipient with an opportunity to comment on the proposed penalty.
- (5) If the recipient of a Notice of Agency Action proposing to assess penalties does not file a written response within 30 calendar days, the Executive Secretary may issue a final order under Section 63G-4-209(1)(c). If the recipient does file a written response, the Board will conduct a formal proceeding on the matter. The Board may delegate decisions, other than dispositive decisions, to an appointed Presiding Officer.
- (6) Nothing in this Rule constitutes authority for any person other than the Executive Secretary or the Board to initiate an adjudicative proceedings under Section 19-3-109. Nothing in this Rule constitutes authority for any person to intervene in an action commenced under Section 19-3-109.
- (7) Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

**R305-6-409. Matters governed by the Safe Drinking Water Act, Title 19, Chapter 4, but not including Section 19-4-109(1).**

(1) Scope. This subsection R305-6-409 applies to all matters governed by the Safe Drinking Water Act, Title 19, Chapter 4.

(2) Definitions.

“Board” means the Drinking Water Board.

“Executive Secretary” means the Executive Secretary of the Drinking Water Board.

(3) The Board delegates to the Executive Secretary the authority to issue Initial Orders and Notices of Violation as described in R305-6-409(4).

(4) Initial Orders and Notices of Violation issued by the Executive Secretary under the authority of the Safe Drinking Water Act are exempt from the requirements of UAPA under 63G-4-102(2)(k). Initial Orders and Notices of Violation include, but are not limited to, Initial Orders and Notices of Violation regarding:

(a) approval, denial, termination, modification, revocation, reissuance or renewal of permits, plans, or approval orders;

(b) notices of violation and orders associated with notices of violation;

(c) orders to comply and orders to cease and desist;

(d) orders regarding variances and exemptions;

(e) certification of water supply operators under R309-300 and backflow technicians under R309-302;

(f) ratings of water systems under R309-400-4;

(g) assessment of fees;

(h) concurrence with source protection plans;

(i) compliance with the requirements of the Safe Drinking Water Act and rules promulgated thereunder; and

(j) declaratory orders under Section 63G-4-503 and R305-6-302.

(5) Initiating and intervening in a proceeding. A request for agency action or a request to intervene in a proceeding, as described in this Rule, shall be served on the Executive Secretary at the address specified in R305-6-402(3).

(6) A challenge to an Initial Order or notice issued under the Safe Drinking water Act will be conducted formally under UAPA.

(7) Agency review of the Board’s decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

**R305-6-410. Matters governed by the Safe Drinking Water Act, Title 19, Chapter 4, Section 19-4-109(1).**

(1) Scope. This subsection R305-6-410 applies to all matters governed by Section 19-3-109 of the Safe Drinking Water Act.

(2) Definitions.

“Board” means the Drinking Water Board.

“Executive Secretary” means the Executive Secretary of the Drinking Water Board.

(3) The Board delegates to the Executive Secretary the authority to issue a Notice of Agency Action assessing penalties under Section 19-4-109(1).

(4) Before issuing a Notice of Agency Action assessing penalties, the Executive Secretary shall provide at least 30 calendar days' a notice of the proposed penalty, and shall provide the recipient with an opportunity to comment on the proposed penalty.

(5) If the recipient of a Notice of Agency Action proposing to assess penalties does not file a written response within 30 calendar days, the Executive Secretary may issue a final order under Section 63G-4-209(1)(c). If the recipient does file a written response, the Board will conduct a formal proceeding on the matter. The Board may delegate decisions, other than dispositive decisions, to an appointed Presiding Officer.

(6) Nothing in this Rule constitutes authority for any person other than the Executive Secretary or the Board to initiate an adjudicative proceedings under Section 19-3-109. Nothing in this Rule constitutes authority for any person to intervene in an action commenced under Section 19-3-109.

(7) Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

**R305-6-411. Matters governed by the Water Quality Act, Title 19, Chapter 5.**

(1) Scope. This subsection R305-6-411 applies to all matters governed by the Water Quality Act, Title 19, Chapter 5.

(2) Definitions.

(a) “Board” means the Water Quality Board.

“Executive Secretary” means the Executive Secretary of the Water Quality Board.

“Presiding Officer” shall mean, as appropriate, an ALJ appointed under 19-1-301, the Board, or, for matters governed by Section 19-5-112(2), the Executive Director.

(3) The Board delegates to the Executive Secretary the authority to issue Initial Orders and Notices of Violation as described in R305-6-411(4).

(4) Initial Orders and Notices of Violation issued by the Executive Secretary under the authority of the Water Quality Act are exempt from the requirements of UAPA under 63G-4-102(2)(k). Initial Orders and Notices of Violation include, but are not limited to, Initial Orders and Notices of Violation regarding:

(a) approval, denial, termination, modification, revocation, reissuance or renewal of permits, plans, or approval orders;

(b) notices of violation and orders associated with notices of violation;

(c) orders to comply and orders to cease and desist;

(d) orders regarding variances and exemptions

(e) assessment of fees;

(f) requests or approvals for experiments, testing or control plans;

(g) certification of wastewater treatment works operators under R317-10; and



- (h) certification of individuals who design, inspect, maintain, or conduct percolation or soil tests for underground wastewater disposal systems;
  - (i) compliance with the requirements of the Water Quality Act and rules promulgated thereunder; and
  - (j) declaratory orders under Section 63G-4-503 and R305-6-302.
- (5) Initiating and intervening in a proceeding.
- (a) A request for agency action or a request to intervene in a proceeding, as described in this Rule, shall be served on the Executive Secretary and, except as otherwise provided in R305-6-411(5)(b), shall be addressed to the Executive Secretary at the address specified in R305-6-402(7).
- (b) The director of the Radiation Control Division has been appointed as a co-Executive Secretary of the Water Quality Board, with responsibility for uranium mill facilities, low level radioactive waste processing facilities, and low level radioactive waste disposal facilities. A request for agency action or a request to intervene in a proceeding involving an order or notice issued by the Director of the Radiation Control Division as Executive Secretary for the Water Quality Board with respect to those facilities shall be served on the Executive Secretary as specified in R305-6-402(8).
- (6) A challenge to an Initial Order or notice issued under the Water Quality Act will be conducted formally under UAPA.
- (7) The Executive Director shall be the final decisionmaker for a challenge to a permit decision, as specified in Section 19-5-112(2). The Board shall be the final decisionmaker for all other challenges.
- (8) Agency review of the Board's or Executive Director's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

**R305-6-412. Matters governed by the Solid and Hazardous Waste Act, Title 19, Chapter 6, Part 1.**

(1) Scope. This subsection R305-6-412 applies to all matters governed by Solid and Hazardous Waste Act, Title 19, Chapter 5, Part 1.

(2) Definitions.

"Board" means the Solid and Hazardous Waste Control Board.

"Executive Secretary" means the Executive Secretary of the Solid and Hazardous Waste Control Board.

(3) The Board delegates to the Executive Secretary the authority to issue Initial Orders and Notices of Violation as described in R305-6-412(4).

(4) Initial Orders and Notices of Violation issued by the Executive Secretary under the authority of the Solid and Hazardous Waste Act are exempt from the requirements of UAPA under 63G-4-102(2)(k). Initial Orders and Notices of Violation include, but are not limited to, initial proceedings regarding:

- (a) approval, modification, denial, termination, transfer, revocation, or reissuance of permits or plan approvals;

- (b) orders regarding approval for equivalent testing or analytical methods;
  - (c) notices of violation and orders associated with notices of violation;
  - (d) orders regarding variances and exceptions;
  - (e) orders for corrective action;
  - (f) consent orders;
  - (g) compliance with the requirements of the Solid and Hazardous Waste Act and rules promulgated thereunder; and
  - (h) declaratory orders under Section 63G-4-503 and R305-6-302.
- (5) Initiating and intervening in a proceeding. A request to initiate or intervene in a proceeding, as described in this Rule, shall be served on the Executive Secretary as provided in R305-6-402(5) or (6).
- (6) A challenge to an Initial Order or notice issued under the Solid and Hazardous Waste Act will be conducted formally under UAPA.
- (7) Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

**R305-6-413. Matters governed by the Hazardous Substances Mitigation Act, Title 19, Chapter 6, Part 3.**

- (1) Scope. This subsection R305-6-413 applies to all matters governed by the Hazardous Substances Mitigation Act, Title 19, Chapter 6, Part 3.
- (2) Definitions.  
"Presiding officer" means the Executive Director or any person or persons the Executive Director appoints as Presiding Officer.
- (3) Orders and Notices of Violation issued under the authority of the Hazardous Substances Mitigation Act are not exempt from the requirements of UAPA. The provisions of UAPA (including as appropriate the emergency provisions of Section 63G-4-502) and of this Rule shall apply to proceedings initiated under the authority of the Hazardous Substances Mitigation Act.
- (4) Proceedings under this statute shall be conducted formally under UAPA.
- (5) Initiating and intervening in a proceeding. Nothing in this Rule constitutes authority for any person other than the agency to initiate adjudicative proceedings under the Hazardous Substances Mitigation Act. Requests to intervene in a proceeding shall be governed by Section 63G-4-207 and the provisions of this Rule. A request to intervene in a proceeding shall be served on the Executive Director as provided in R305-6-402(1).
- (6) Agency review of the Executive Director's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

**R305-6-414. Matters governed by the Underground Storage Tank Act, Title 19, Chapter 6, Part 4, but not including Sections 19-6-407, 19-6-408, 19-6-416, and 19-6-416.5.**

- (1) Scope. This subsection R305-6-414 applies to all matters governed by the Underground Storage Tank Act, Title 19, Chapter 6, Part 4, but not including Sections 19-6-407, 19-6-408, 19-6-416, and 19-6-416.5.

(2) Definitions.

“Board” means the Solid and Hazardous Waste Control Board.

“Executive Secretary” means the Executive Secretary of the Solid and Hazardous Waste Control Board.

(3) The Executive Secretary has statutory authority to issue Initial Orders and Notices of Violation as described in R305-6-414(4).

(4) Initial Orders and Notices of Violation issued by the Executive Secretary under the authority of the Underground Storage Tank Act are exempt from the requirements of UAPA under 63G-4-102(2)(k), except as provided in R305-6-415. Initial Orders and Notices of Violation that are exempt from UAPA include, but are not limited to, orders and notices regarding:

(a) approval, denial, termination, or revocation of certifications, registrations, and certificates of compliance;

(b) orders regarding approval for equivalent testing or analytical methods;

(c) notices of violation and orders associated with notices of violation;

(d) orders regarding variances and exceptions;

(e) orders for investigation or corrective action;

(f) apportionment;

(g) consent orders;

(h) compliance with the requirements of the Underground Storage Tank Act and rules promulgated thereunder; and

(i) declaratory orders under Section 63G-4-503 and R305-6-302.

(4) Initiating and intervening in a proceeding.

(a) A challenge to a revocation of a certificate of compliance shall be initiated by serving a Request for Agency Action on the Executive Director as provided in R305-6-402(1). *See* Section 19-6-414(3) of the Underground Storage Tank Act.

(b) All other requests to initiate or intervene in a proceeding, as described in this Rule, shall be directed to the Board and served on the Executive Secretary as provided in R305-6-402(6).

(5) A challenge to an Initial Order or notice issued under the Underground Storage Tank Act will be conducted formally under UAPA.

(6) Agency review of the Executive Directors or the Board’s decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

**R305-6-415. Matters governed by the Underground Storage Tank Act, Title 19, Chapter 6, Sections 19-6-407, 19-6-408, 19-6-416, and 19-6-416.5.**

(1) Scope. This subsection R305-6-415 applies to all matters governed by Utah Code Ann. Sections 19-6-407 and 19-6-408 of the Underground Storage Tank Act.

(2) Definitions.

“Board” means the Solid and Hazardous Waste Control Board.

“Executive Secretary” means the Executive Secretary of the Solid and Hazardous Waste Control Board.

- (3) The Executive Secretary has statutory authority to issue a Notice of Agency Action assessing penalties under Section 19-3-109.
- (4) Before issuing a Notice of Agency Action assessing penalties, the Executive Secretary shall provide at least 30 calendar days' a notice of the proposed penalty, and shall provide the recipient with an opportunity to comment on the proposed penalty.
- (5) If the recipient of a Notice of Agency Action proposing to assess penalties does not file a written response within 30 calendar days, the Executive Secretary may issue a final order under Section 63G-4-209(1)(c). If the recipient does file a written response, the Board will conduct a formal proceeding on the matter. The Board may appoint a Presiding Officer for pre-hearing and hearing matters, but any dispositive determinations shall be made by the Board. Proceedings described in paragraph (4) are not exempt from UAPA.
- (6) Nothing in this Rule constitutes authority for any person other than the Executive Secretary or the Board to initiate an adjudicative proceedings under Sections 19-6-107, 19-6-108, 19-6-416, or 19-6-416.5. Nothing in this Rule constitutes authority for any person to intervene in an action commenced under Sections 19-6-107, 19-6-108, 19-6-416, or 19-6-416.5.
- (7) Orders issued by the Executive Secretary to assess penalties under Sections 19-6-407 and 19-6-408 are not exempt from the requirements of UAPA.
- (8) Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

**R305-6-416. Matters governed by the Used Oil Management Act, Title 19, Chapter 6, Part 7.**

- (1) Scope. This subsection R305-6-416 applies to all matters governed by the Used Oil Management Act, Title 19, Chapter 6, Part 7.
- (2) Definitions.
  - “Board” means the Solid and Hazardous Waste Control Board.
  - “Executive Secretary” means the Executive Secretary of the Solid and Hazardous Waste Control Board.
- (3) The Executive Secretary has statutory authority to issue Initial Orders and Notices of Violation as described in R305-6-416(4).
- (4) Initial Orders and Notices of Violation issued by the Executive Secretary under the authority of the Used Oil Management Act are exempt from the requirements of UAPA under 63G-4-102(2)(k). Initial Orders and Notices of Violation include, but are not limited to, initial proceedings regarding:
  - (a) approval, modification, denial, termination, transfer, revocation, or reissuance of permits, plan approvals, sureties and registrations;
  - (b) notices of violation and orders associated with notices of violation;
  - (c) orders for corrective action;
  - (d) orders regarding variances and exceptions;
  - (e) consent orders; and

- (f) registration and revocation of registration of used oil collection centers, used oil aggregation points or DIYer used oil collection centers;
  - (g) reclamation orders;
  - (h) compliance with the requirements of the Used Oil Management Act and rules promulgated thereunder; and
  - (i) declaratory orders under Section 63G-4-503 and R305-6-302.
- (5) Initiating and intervening in a proceeding. A request to initiate or intervene in a proceeding, as described in this Rule, shall be served on the Executive Secretary as specified in R305-6-402(5).
- (6) A challenge to an Initial Order or notice issued under the Used Oil Management Act will be conducted formally under UAPA.
- (7) Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

**R305-6-417. Matters governed by the Waste Tire Recycling Act, Title 19, Chapter 6, Part 8.**

- (1) Scope. This subsection R305-6-417 applies to all matters governed by Waste Tire Recycling Act, Title 19, Chapter 6, Part 8.
- (2) Definitions.
- “Board” means the Solid and Hazardous Waste Control Board.
- “Executive Secretary” means the Executive Secretary of the Solid and Hazardous Waste Control Board.
- (3) The Executive Secretary has statutory authority to issue Notices of Agency Action as described in R305-6-417(4).
- (4) Notices of agency action for orders and notices of violation under the Waste Tire Recycling Act include, but are not limited to, notices regarding proceedings for:
- (a) approval, modification, denial, termination, transfer, revocation, or reissuance of permits, plan approvals,
  - (b) approvals, denial and other orders regarding financial assurance and insurance;
  - (c) notices of violation and orders associated with compliance with the statute;
  - (d) orders regarding variances or exemptions;
  - (e) orders for corrective action, including reclamation;
  - (f) consent orders;
  - (g) registration and revocation of registration of waste tire transporters and recyclers;
  - (h) approval of reimbursements;
  - (i) approval of payments to counties or municipalities for costs of a waste tire transporter or recycler to remove waste tires; and
  - (j) declaratory orders under Section 63G-4-503 and R305-6-302.
- (5) If the recipient of a Notice of Agency Action does not file a written response within 30 calendar days, the Executive Secretary may issue a final order under Section 63G-4-209(1)(c). If the recipient does file a written response, the Board will conduct a formal proceeding on the matter. The Board may appoint a Presiding Officer for pre-hearing and hearing matters, but any

dispositive determinations shall be made by the Board. Proceedings described in paragraph (4) are not exempt from UAPA.

(6) Initiating and intervening in a proceeding. A request to initiate or intervene in a proceeding, as described in this Rule, shall be served on the Executive Secretary as specified in R305-6-402(5).

(7) Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

**R305-6-418. Matters governed by the Illegal Drug Operations Site Reporting and Decontamination Act, Title 19, Chapter 6, Part 9.**

(1) Scope. This subsection R305-6-418 applies to all matters governed by the Illegal Drug Operations Site Reporting and Decontamination Act, Title 19, Chapter 6, Part 9.

(2) Definitions.

"Board" means the Solid and Hazardous Waste Control Board.

"Executive Secretary" means the Executive Secretary of the Solid and Hazardous Waste Control Board.

(3) The Board delegates to the Executive Secretary the authority to issue Notices of Agency Action as described in R305-6-418(4).

(4) Notices of agency action for orders and notices of violation under the Illegal Drug Operations Site Reporting and Decontamination Act include, but are not limited to, notices regarding proceedings for:

(a) determinations regarding certifications of decontamination specialists; and

(b) declaratory orders under Section 63G-4-503 and R305-6-302.

(5) If the recipient of a Notice of Agency Action proposing to assess penalties does not file a written response within 30 calendar days, the Executive Secretary may issue a final order under Section 63G-4-209(1)(c). If the recipient does file a written response, the Board will conduct a formal proceeding on the matter. The Board may appoint a Presiding Officer for pre-hearing and hearing matters, but any dispositive determinations shall be made by the Board. Proceedings described in paragraph (4) are not exempt from UAPA.

(6) Initiating and intervening in a proceeding. A request to initiate or intervene in a proceeding, as described in this Rule, shall be served on the Executive Secretary as specified in R305-6-402(6).

(7) Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

**R305-6-419. Matters governed by the Mercury Switch Removal Act, Title 19, Chapter 6, Part 10.**

(1) Scope. This subsection R305-6-419 applies to all matters governed by the Mercury Switch Removal Act, Title 19, Chapter 6, Part 10.

(2) Definitions.

"Board" means the Solid and Hazardous Waste Control Board.

“Executive Secretary” means the Executive Secretary of the Solid and Hazardous Waste Control Board.

(3) Initial Orders and Notices of Violation issued by the Executive Secretary under the authority of the Mercury Switch Removal Act are exempt from the requirements of UAPA under Section 63G-4-102(2)(k). Initial Orders and Notices of Violation include, but are not limited to, initial proceedings regarding:

- (a) approval, modification, denial, termination, transfer, revocation, or reissuance of plans;
- (b) notices of violation and orders associated with compliance with the statute, including orders for corrective action;
- (c) orders regarding variances and exceptions;
- (d) consent orders;
- (e) compliance with the requirements of the Mercury Switch Removal Act and rules promulgated thereunder; and
- (f) declaratory orders under Section 63G-4-503 and R305-6-302.

(4) Initiating and intervening in a proceeding. A request to initiate or intervene in a proceeding, as described in this Rule, shall be served on the Executive Secretary as specified in R305-6-402(5).

(5) A challenge to an Initial Order or notice issued under the Mercury Switch Removal Act will be conducted formally under UAPA.

(6) Agency review of the Board’s decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

**R305-6-420. Matters governed by the Industrial Byproduct Reuse Act, Title 19, Chapter 6, Part 11.**

(1) Scope. This subsection R305-6-420 applies to all matters governed by the Industrial Byproduct Reuse Act, Title 19, Chapter 6, Part 8.

(2) Definitions.

“Board” means the Solid and Hazardous Waste Control Board.

“Executive Secretary” means the Executive Secretary of the Solid and Hazardous Waste Control Board.

(3) The Executive Secretary has statutory authority to issue Notices of Agency Action as described in R305-6-420(4).

(4) Notices of agency action for orders and notices of violation under the Industrial Byproduct Reuse Act include, but are not limited to, notices regarding proceedings for:

- (a) orders regarding applications for reuse of an industrial byproduct; and
- (b) declaratory orders under Section 63G-4-503 and R305-6-302.

(5) If the recipient of a Notice of Agency Action does not file a written response within 30 calendar days, the Executive Secretary may issue a final order under Section 63G-4-209(1)(c). If the recipient does file a written response, the Board will conduct a formal proceeding on the matter. The Board may appoint a Presiding Officer for pre-hearing and hearing matters, but any

dispositive determinations shall be made by the Board. Proceedings described in paragraph (4) are not exempt from UAPA.

(6) Initiating and intervening in a proceeding. A request to initiate or intervene in a proceeding, as described in this Rule, shall be served on the Executive Secretary as specified in R305-6-402(5).

(7) Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

**R305-6-421. Matters governed by the Voluntary Cleanup Program statute, Title 19, Chapter 8.**

(1) Scope. This subsection R305-6-422 applies to all matters governed by the Voluntary Cleanup Program statute, Title 19, Chapter 8.

(2) Definitions.

"Presiding Officer" means the Executive Director or the Executive Director's designee.

(3) Determinations about whether to enter into an agreement under this program lie within the sole discretion of the Executive Director. Unless the Executive Director designates another Presiding Officer, papers shall be filed with the Executive Director as provided in R305-402(1).

(4) The Executive Director delegates to the Director of the Division of Environmental Response and Remediation authority to issue orders and other Notices of Agency Action regarding:

(a) proposed determinations regarding approvals, disapprovals or modifications of work plans and reports;

(b) approvals, denials or modifications of certificates of completion;

(c) declaratory orders under Section 63G-4-503 and R305-6-302.

(5) If the recipient of a Notice of Agency Action proposing to assess penalties does not file a written response within 30 calendar days, the Executive Director may issue a final order under Section 63G-4-209(1)(c). If the recipient does file a written response, the Executive Director will conduct a formal proceeding on the matter. The Executive Director may delegate decisions, other than dispositive decisions, to an appointed Presiding Officer.

(6) Agency review of the Executive Director's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

**R305-6-422. Matters governed by the Environmental Institutional Control Act, Title 19, Chapter 10.**

(1) Scope. This subsection R305-6-422 applies to all matters governed by the Environmental Institutional Control Act, Title 19, Chapter 6, Part 8.

(2) Definitions.

"Presiding Officer" means the Executive Director or the Executive Director's designee.

(3) A request to terminate or modify an environmental institutional control adopted under this act shall be considered a Request for Agency Action and shall be directed to the Executive Director as provided in R305-6-402(1). The Executive Director may at any time designate



another Presiding Officer. The person submitting the Request for Agency Action shall be notified of the designation.

(4) Proceedings described in paragraph (3) will be conducted under UAPA using formal procedures. Proceedings under the Environmental Institutional Control Act are not exempt from the requirements of UAPA.

(5) Agency review of the Executive Director's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

**R305-6-423. Matters governed by the Uniform Environmental Covenants Act, Title 57, Chapter 25.**

- (1) Scope. This subsection R305-6-423 applies to all matters governed by the Uniform Environmental Covenants Act, Title 57, Chapter 25.
- (2) The Executive Director, or the Executive Directors designee, is the Presiding Officer.
- (3) Orders issued by the Executive Director or the Executive Director's designee under the authority of the Environmental Institutional Control Act are not exempt from the requirements of UAPA.
- (4) A request to approve, modify or terminate an environmental covenant shall be considered to be a Request for Agency Action and a proceeding to address the Request shall be conducted under UAPA using formal procedures.
- (5) Initiating and intervening in a proceeding. A request to initiate or intervene in a proceeding, as described in this Rule, shall be filed with the Executive Director as specified in R305-6-402(1).
- (6) Agency review of the Executive Director's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.